

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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, ID No.

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CC:CORP:B06

PLR-150385-09

Date:

May 10, 2010

LEGEND

Distributing =

Controlled 1 =

Controlled 2 =

Shareholder 1 =

Shareholder 2 =

a =

b =

c =

d =

e =

Business A =

Dear _____ :

This letter responds to your November 6, 2009, letter requesting rulings on certain federal income tax consequences of a proposed transaction described below (the "Proposed Transaction"). Information in the November 6, 2009 letter as well as subsequent correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not yet verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Distribution (described below): (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations, (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation, the controlled corporations, or both (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)), or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest in the distributing corporation or either of the controlled corporations. (see § 355(e) and § 1.355-7).

Summary of Facts

Distributing is a holding company that owns all the stock of Controlled 1 and Controlled 2 (together, "the "Controlled Corporations"). Distributing has two classes of stock outstanding, Class A voting common stock and Class B voting common stock. There are a shares of Class A stock outstanding and b shares of Class B common stock outstanding. Shareholder 1 owns c shares of the Class A voting common stock and d percent of the Class B voting common stock. Shareholder 2 owns e shares of the Class A voting common stock and f percent of the Class B voting common stock.

Controlled 1 and Controlled 2 conduct Business A.

Financial information has been received indicating that Business A of Controlled 1 and Business A of Controlled 2 each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years. The parties have structured the Proposed Transaction, described below.

Proposed Transaction

- (i) Distributing will distribute the Controlled 1 stock to Shareholder 1 in exchange for Shareholder 1's Distributing stock.
- (ii) Distributing will distribute the Controlled 2 stock to Shareholder 2 in exchange for Shareholder 2's Distributing stock. (Collectively, steps (i) and (ii) are referred to as the "Distribution").
- (iii) Following the Distribution, Distributing will liquidate.

Representations

Distributing has made the following representations with respect to the Proposed Transaction:

- (a) The fair market value of the Controlled 1 and Controlled 2 stock received by Shareholder 1 and Shareholder 2, respectively, will approximately equal the fair market value of the Distributing stock surrendered by each shareholder in the exchange.
- (b) No part of the consideration to be distributed by the Distributing corporation will be received by a shareholder as a creditor, an employee, or in any capacity other than that other than that of a shareholder of the corporation
- (c) The Distributing and the Controlled Corporations will each treat all members of their respective SAG (as defined in section 355(b)(3)(B)) as one corporation in determining whether it meets the requirements of section 355(b)(2)(A) regarding the active trade or business.
- (d) The five years of financial information submitted on behalf of the Distributing SAG is representative of the Distributing SAG's present business operation, and with regard to such Distributing SAG, there have been no substantial operational changes since the date of the last financial statements submitted.
- (e) The five years of financial information submitted on behalf of the Controlled 1 SAG is representative of the Controlled 1 SAG's present business operation, and with regard to such Controlled 1 SAG, there have been no substantial operational changes since the date of the last financial statements submitted.
- (f) The five years of financial information submitted on behalf of the Controlled 2 SAG is representative of the Controlled 2 SAG's present business operation, and with regard to such Controlled 2 SAG, there have been no substantial operational changes since the date of the last financial statements submitted.

- (g) Following the transaction, the Controlled 1 SAG and Controlled 2 SAG will each continue the active conduct of its business, independently and with its separate employees.
- (h) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of the Distributing corporation's stock entitled to vote, or 50 percent or more of the total value of shares of all classes of the Distributing corporation's stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution.
- (i) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of the Controlled 1 corporation's stock entitled to vote, or 50 percent or more of the total value of shares of all classes of the Controlled 1 corporation's stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution or (ii) attributable to distributions on the Distributing corporation's stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution.
- (j) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of the Controlled 2 corporation's stock entitled to vote, or 50 percent or more of the total value of shares of all classes of the Controlled 2 corporation's stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution or (ii) attributable to distributions on the Distributing corporation's stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution.
- (k) The distribution of the stock, or stock and securities, of the Controlled Corporations is carried out for the following business purposes: (1) retention of key employees and removing management conflicts; (2) allowing profit maximization through risk taking and business planning and (3) simplify ownership structure for Business A sign-up and payment limitation purposes. The distribution of the stock, or stock and securities, of the Controlled Corporations is motivated, in whole or substantial part, by one or more of these corporate business purposes.
- (l) The transaction is not used principally as device for the distribution of the earnings and profits of the Distributing corporation or the Controlled Corporations or both.

- (m) No intercorporate debt will exist between the Distributing corporation and the Controlled Corporations at the time of, or subsequent to the, the distribution of the Controlled Corporation's stock.
- (n) Payments made in connection with all continuing transactions, if any, between the Distributing and Controlled Corporations, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (o) There is no acquisition of stock of the Distributing corporation or any Controlled Corporation (including any predecessor or successor of any such corporation) that is part of a plan or series of related transactions (within the meaning of § 1.355-7) that includes the distribution of the Controlled Corporations' stock.
- (p) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (q) Immediately after the Distribution, neither the Distributing corporation nor the Controlled 1 corporation or the Controlled 2 corporation will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

Rulings

- 1) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Shareholder 1 and Shareholder 2 on the Distribution (§ 355(a)(1)).
- 2) No gain or loss will be recognized by Distributing on the Distribution (§ 355(c)).
- 3) The aggregate basis of the Controlled 1 stock in the hands of Shareholder 1 immediately after the Distribution will equal Shareholder 1's aggregate basis in the Distributing stock surrendered in the Distribution (§ 358(a)(1)).
- 4) The aggregate basis of the Controlled 2 stock in the hands of Shareholder 2 immediately after the Distribution will equal Shareholder 2's aggregate basis in the Distributing stock surrendered in the Distribution (§ 358(a)(1)).
- 5) The holding period of the Controlled 1 stock received by Shareholder 1 will include the holding period of the Distributing stock surrendered by that shareholder in exchange therefore, provided such stock is held as a capital asset on the date of the Distribution (§ 1223(1)).
- 6) The holding period of the Controlled 2 stock received by Shareholder 2 will include the holding period of the Distributing stock surrendered by that shareholder in

exchange therefore, provided such stock is held as a capital asset on the date of the Distribution (§ 1223(1)).

- 7) Earnings and profits will be allocated between Controlled 1 and Controlled 2 in accordance with section 312(h) and Treas. Reg. §§ 1.312-10.

Caveats

No opinion is expressed about the tax treatment of the Proposed Transaction under other provisions of the Code or regulations or the tax treatment of any condition existing at the time of, or effects resulting from, the Proposed Transaction that is not specifically covered by the above rulings. In particular, no opinion is expressed regarding: (i) whether the Distribution satisfies the business purpose requirement of § 1.355-2(b), (ii) whether the Distribution is used principally as a device for the distribution of the earnings and profits of Distributing or the Controlled Corporations or both (see § 355(a)(1)(B) and § 1.355-2(d)), or (iii) whether the Distribution is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in Distributing or either of the Controlled Corporations (see § 355(e) and § 1.355-7).

Procedural Matters

The ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this letter ruling.

In accordance with the power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Richard M. Heinecke
Assistant to the Branch Chief, Branch 6
Office of Associate Chief Counsel (Corporate)